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1983

# Granada, Inc., Utah Corporation v. George Tanner and Ida Tanner Hamblin : Brief of Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

GRANADA, INC., Utah  
corporation,

Plaintiff and  
Respondent,

vs.

GEORGE TANNER and IDA TANNER  
HAMBLIN,

Defendants and  
Appellants,

Supreme Court No. 19247

STANLEY H. WALKER, Utah  
County Treasurer,

Defendant.

BRIEF OF RESPONDENT

APPEAL FROM THE SUMMARY JUDGMENT OF THE DISTRICT COURT OF THE  
FOURTH JUDICIAL DISTRICT IN AND FOR UTAH COUNTY, STATE OF UTAH  
HONORABLE J. ROBERT BULLOCK, JUDGE

Cullen Y. Christensen, for  
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55 East Center Street  
P. O. Box 1466  
Provo, Utah 84603  
Attorneys for Plaintiff and  
Respondent

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and Appellants

FILED

OCT 22 1983

Clk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

---

GRANADA, INC., a Utah	:	
corporation,	:	
	:	
Plaintiff and	:	
Respondent,	:	
	:	
vs.	:	
	:	
GEORGE TANNER and IDA TANNER	:	
HAMBLIN,	:	
	:	
Defendants and	:	Case No. 19247
Appellants,	:	
	:	
	:	
STANLEY H. WALKER, Utah	:	
County Treasurer,	:	
	:	
Defendant.	:	

---

BRIEF OF RESPONDENT, GRANADA, INC.

---

STATEMENT OF THE KIND OF CASE

This is an action to enforce redemption of real property from a sheriff's sale under an order of sale.

DISPOSITION IN LOWER COURT

The court below granted GRANADA INC.'S Motion for Summary Judgment declaring that the property in question had been properly redeemed from sheriff's sale by respondent, GRANADA INC.

## RELIEF SOUGHT ON APPEAL

Plaintiff and respondent GRANADA INC. seeks affirmance of the Summary Judgment entered in the court below.

## STATEMENT OF FACTS

Respondent generally agrees with the Statement of Facts set forth in appellants' Brief, but would add that American Tierra Corporation and Charles C. Moore, assignors of the Right of Redemption to respondent, were found to be judgment debtors of First Security Mortgage Company in the Judgment and Decree of Foreclosure in Case No. 55298, Fourth District Court of the State of Utah, which is the foreclosure action giving rise to the redemption involved in the matter now before the Court (R31-34, 41-42). (Copies of plaintiff's Motion for Summary Judgment, appellants' Response thereto, and the Amended Summary Judgment entered by the court below are attached hereto as Appendices A, B and C respectively).

## ARGUMENT

### POINT I

NO GENUINE ISSUE OF MATERIAL FACT IS RAISED BY THE PLEADINGS AND AFFIDAVITS ON FILE.

### (RESPONDENT'S RIGHT TO REDEEM)

Certified copies of documents demonstrating respondent's ownership of the right of redemption were attached

to respondent's motion for Summary Judgment as follows:

1. Exhibit A - Judgment and Decree of Foreclosure showing that respondent's assignors, American Tierra Corporation and Charles C. Moore, were judgment debtors (R31-34) and thus entitled to make redemption (Rule 69(f)(1), Utah Rules of Civil Procedure).

2. Exhibits C and E showing the transfer and assignment of such right of redemption to respondent (R37-38, 41-42).

Under the provisions of such Rule 69(f)(1), Utah Rules of Civil Procedure, a successor in interest of a judgment debtor is entitled to make redemption. While it is true that appellants, in their Answer to the Complaint, did deny that respondent's assignors were the owners of a right of redemption (R4,20), no such issue was raised by appellants in their response to respondent's Motion for Summary Judgment (R53-54). Since respondent's Motion for Summary Judgment was supported by certified documents on this point, it was incumbent upon appellants to do more than rely upon a general denial in their answer in order to raise a genuine issue for trial on this point.

Rule 56(e), Utah Rules of Civil Procedure, states in part as follows:

"When a motion for summary judgment is made and supported as provided in this Rule, an adverse

party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Not having effectively raised this issue before the Court below, the appellants should not now be permitted to raise the matter for the first time on appeal. (See Franklin Financial vs. New Empire Development Company, - 659 P2d 1040).

(REDEMPTION BY RESPONDENT)

Rule 69(f)(2), Utah Rules of Civil Procedure, provides that redemption may be made by making payment to the officer who made the sale. The sheriff's sale in this case was conducted by Lt. Keith Bills of the Utah County Sheriff's Department (R32, 39-40). Lt. Bills, in his Affidavit, stated that he was contacted by the attorney for respondent about making redemption, but because of an apparent dispute, at least in the mind of Lt. Bills, as to the amount to be paid, Lt. Bills directed that the redemption funds be paid to the Court under the provisions of Rule 69(f)(3), Utah Rules of Civil Procedure (R39-40). Thereupon, redemption funds in the amount of \$84,366.00 were paid to the Utah County Clerk, Clerk of the Court out of which the order authorizing the sale was issued



(R31-35), on behalf of respondent and for the benefit of appellants within the period for redemption allowed by law (R47,49).

Appellants do not now dispute the amount paid or contend that the procedure for depositing the funds with the Court was not followed. Their contention appears to be that there really was no dispute as to the amount payable and thus payment either had to be made to appellants or to the officer. Appellants apparently seek to impeach the personal affidavit of Lt. Bills (R39-40) through the Affidavit of Lawson O. Hamblin (R59-60). However, such Affidavit of Lawson O. Hamblin does not directly dispute the personal affidavit of the officer to the effect that when contacted by the attorney for respondent, the belief that there was a dispute did exist in the officer's mind and he thus directed respondent to pay the redemption money into court (R39-40).

While the right of redemption is a creature of statute, it has been held by this Court that the rules and statutes dealing with redemption are regarded as remedial in character and should be given liberal construction (United States vs. Loosley vs. Griffiths, 551 P2d 506; State Bank of Lehi vs. Woolsey, 565 P2d 413). The case of Mollerup vs. Storage Systems International, 569 P2d 1122, cited by appellants does

not hold to the contrary.

Even though none of the parties before the Court were original parties to the foreclosure action, but are assignees thereof, the appellants herein can obtain all that they are entitled to, namely, the sum of \$84,366.00, by merely asking the clerk of the court for the same.

Appellants have cited the New Mexico case of Moise vs. Tim 262 P. 535, as authority for the proposition that a redemption payment cannot be made to the clerk of the court. This may be so in New Mexico whose redemption statute, as cited by the New Mexico Supreme Court, expressly provides that any redemption payment must be made to the purchaser or his assigns. However, such is not the law in Utah where payment may be made into court under the provisions of Rule 69(f)(3), Utah Rules of Civil Procedure.

(TENDER)

On the issue of tender it is obvious from the personal affidavit of the officer who conducted the sale that he would not have accepted the money had physical delivery to him been attempted by respondent and that such a gesture would have been useless (R39-40). Consequently, payment of the funds into court was sufficient (Hansen vs. Christensen, 545 P2d 1151).

Schero vs. Schmidt, 15 Utah 2d 306, 392 P2d 37; 74 Am. Jur. 2d 547).

To preclude Summary Judgment there must be a genuine dispute as to a material fact which may affect the outcome of the case if a full trial were held. In this case, appellants basically seek reversal on the grounds that there was really no dispute as to the amount required to be paid for redemption and thus, the money could not properly be paid into court under the rule. The documents and affidavits on file do not raise any genuine questions as to the state of mind of the officer conducting the sale to the effect that there was such a dispute and that he would not, therefore, accept redemption payment. (R39-40; R57-58). Any further litigation in this matter would not change that fact. (See Burningham vs. Ott, 525 P2d 620).

Under Rule 69(f)(3) Utah Rules of Civil Procedure, respondent's representative was not required to get into an argument with the officer who conducted the sale, but was entitled to pay the funds into court and let the court settle any apparent problems.

#### POINT II

AFFIDAVITS IN SUPPORT OF RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ARE NOT DEFICIENT UNDER RULE 56 OF THE UTAH RULES OF CIVIL PROCEDURE.

Respondent does not agree that the affidavits in

support of its Motion for Summary Judgment are based on hearsay contrary to Rule 56(e), Utah Rules of Civil Procedure. But in any event, the matter has not been timely raised by the appellants. No objections to such affidavits were raised by appellants before the court below and thus, this issue cannot properly be raised for the first time on appeal (Franklin Financial vs. New Empire Development Company, supra). In addition, the failure of appellants to move to strike the affidavits of the respondent in the court below on the ground that the same were based on hearsay and not made on firsthand knowledge constituted a waiver of such objection (See Fox vs. Allstate Insurance Company, 22 Utah 2d 383, 453 P2d 701; Strange vs. Ostlund, 594 P2d 877; Howick vs. Bank of Salt Lake, 28 Utah 2d 64, 498 P2d 352).

### POINT III

THE AMENDED SUMMARY JUDGMENT IS NOT VOID FOR WANT OF JURISDICTION OR THE PROPER INVOCATION THEREOF.

#### (POSITION OF COUNTY CLERK)

The county clerk is ex officio the clerk of the District Court (Consitution of Utah, Article VIII, Section 14; Section 17-20-1, Utah Code Annotated 1953, as amended). In such capacity, the clerk is within the control of the court in connection with administrative matters (15A Am. Jur. 2d 140).

The County Clerk having receipted for the redemption funds on behalf of the Court (R19), it is appropriate that the District Court direct the Clerk with respect to such funds. The court below had the jurisdiction and power to make its order wherein the clerk was directed to cooperate in the disbursement of the redemption funds to the appellants. (R63)

(JURISDICTION OF COURT TO ORDER INSTRUMENT OF CONVEYANCE)

The Complaint in this matter and plaintiff's Motion for Summary Judgment seek to have the Court require the appellants to accept the redemption funds paid into Court by the respondent, and to require the appellants to execute and deliver a certificate of redemption to respondents (R7,22). These were the issues addressed by appellants' response to the Motion for Summary Judgment (R53), and they were the issues ruled upon by the court below (R61-67). The Court clearly had jurisdiction of the subject matter, and no objection on that ground was ever even suggested by the appellants before the court below.

The Summary Judgment entered by the Court below directed the defendants and appellants to execute a document affecting title to land situate within the State of Utah, specifically a redemption certificate, within a stated time (R62-63). The Court further ordered that in the event of the

failure of the appellants to deliver such a document within the time stated, the amended Summary Judgment itself should be considered an instrument of transfer. Such procedure is provided for in Rule 70, Utah Rules of Civil Procedure, as a means of giving effect to judgments of the Court and to accomplish transfer of such interests in real property as the Court may have directed. The Judgment of the court below in this case, in the absence of cooperation by the appellants, should be effective to terminate any interest of the appellants in said property adverse to that of respondents, and said Rule 70, Utah Rules of Civil Procedure, permits such a result. Such action under said Rule 70 is within the jurisdiction and power of the court below to enforce judgments made by it.

#### CONCLUSION

In this case, the amount of money to which the appellants are entitled upon redemption was timely and properly paid into court for their benefit. Appellants should thus be required to accept said sum and to execute and deliver an appropriate redemption certificate to the respondent, or in the event of appellants' refusal to do so, the Judgment of the Court should be given such effect so as to clear respondent's title to the property involved of any adverse interests of the appellants.

The amended Summary Judgment issued by the court below on May 17, 1983, should be affirmed on appeal.

Respectfully submitted,



Cullen Y. Christensen, for  
CHRISTENSEN, TAYLOR & MOODY  
Attorneys for Granada Inc.,  
Plaintiff and Respondent  
55 East Center Street  
P. O. Box 1466  
Provo, UT 84603

CERTIFICATE OF MAILING

Two copies of the foregoing were mailed, postage prepaid, to E. J. Skeen, attorney for defendants and appellants, 50 South Main Street, Suite 1600, P.O. Box 3400, Salt Lake City, Utah 84110-3400; and to Noall T. Wootton, Utah County Attorney, attorney for defendant, Utah County Treasurer, 51 South University Avenue, Provo, Utah 84601, this 11<sup>th</sup> day of October, 1983.

  
CULLEN Y. CHRISTENSEN, Attorney

1982 AUG 10 PM 4:42

WILLIAM R. HUGHES, CLERK  
DEPT.

CULLEN Y. CHRISTENSEN  
CHRISTENSEN, TAYLOR & MOODY  
Attorneys for  
55 East Center Street  
P.O. Box 1466  
Provo, Utah 84603  
Telephone (801) 373 2721

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

GRANADA, INC., a Utah  
corporation,

Plaintiff,

Civil No. 59808

vs.

MOTION FOR PARTIAL  
SUMMARY JUDGMENT

GEORGE TANNER, et al.,

Defendants.

Pursuant to and for the purposes permitted by Rule 56 of the Utah Rules of Civil Procedure, the plaintiff hereby moves the Court to enter its order for partial summary judgment in favor of the plaintiff and against the defendants. For the purposes of this motion, plaintiff seeks an order of this Court directing the defendants, TANNER and HAMBLIN, to execute and deliver to plaintiff a good and proper Certificate of Redemption to plaintiff covering the real property described in plaintiff's Complaint, and that said defendants be directed to accept the funds paid by plaintiff to the Utah County Clerk and held by the Utah County Treasurer as consideration and payment for such Certificate of Redemption. This motion is submitted on the grounds and for the reason that the pleadings and the affidavits and exhibits attached hereto all show that there is no genuine issue as to any material fact with respect to such matters and that plaintiff should be entitled to judgment as a matter of law.

In conjunction with this motion, plaintiff submits a Memorandum of Points and Authorities as required by Rule 2.8 of the Rules of Practice of the District and Circuit Courts of the State of Utah.



1 DATED this 10<sup>th</sup> day of August, 1982.

2  
3 Cullen V. Christensen  
4 Cullen V. Christensen  
5 CHRISTENSEN, TAYLOR & MOODY  
6 Attorneys for Plaintiff  
7 55 East Center Street  
8 P.O. Box 1466  
9 Provo, UT 84603

10 CERTIFICATE OF MAILING

11 Copy of the foregoing was mailed, postage prepaid, to  
12 Edwin J. Skeen, VAN COTT, BAGLEY, CORNWALL & MCCARTHY, Attorneys  
13 for defendants, George Tanner and Ida Fanner Hamblin, 50 South  
14 Main Street, Suite 1600, Salt Lake City, Utah 84144, and to  
15 Noall T. Wootton, Utah County Attorney, 51 South University Avenue,  
16 Provo, Utah 84601, this 10<sup>th</sup> day of August, 1982.

17  
18 Cullen V. Christensen  
19 CULLEN V. CHRISTENSEN, Attorney  
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COLLEEN W. CHRISTENSEN  
CHRISTENSEN, TAYLOR & MOODY  
Attorneys for Plaintiff  
55 East Center Street  
P O Box 1466  
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IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

GRANADA, INC., a Utah  
corporation,

Plaintiff,

Civil No. 59808

vs.

MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT

GEORGE TANNER, et al.,

Defendants.

Pursuant to and for the purposes permitted by Rule 2.8 of  
the Rules of Practice in the District and Circuit Courts of the  
State of Utah, and pursuant to Rule 56 of the Utah Rules of Civil  
Procedure, the plaintiff submits the following Memorandum of  
Points and Authorities in support of its Motion for Partial Summary  
Judgment.

FACTS

Plaintiff's Motion for Partial Summary Judgment involves  
real property located in Utah County, Utah, and described as  
follows:

BEGINNING on the North right of way line of 2200 North  
Street at a point which is 1052.12 feet North and  
548.93 feet East from the South quarter corner of  
Section 20, Township 6 South, Range 2 East of the  
Salt Lake Base Meridian, thence North 87°17'23" West  
204.16 feet along said right of way; thence North  
1°26'08" West 427.23 feet; thence South 87°17'24"  
East 204.49 feet; thence South 1°26'08" East 312.69  
feet; thence South 1°16'14" East 114.52 feet to the  
point of beginning.

(Admitted in Answer of defendants, TANNER and HAMBLIN,  
paragraph 1).

1 On April 28, 1981, a Judgment and Decree of Foreclosure  
2 was entered by the Fourth Judicial District Court in and for Utah  
3 County, Case No. 55298, entitled, FIRST SECURITY MORTGAGE COMPANY,  
4 Plaintiff, v. AMERICAN TIERRA CORPORATION, et al., Defendants, in  
5 which AMERICAN TIERRA CORPORATION and CHARLES C. MOORE were held  
6 by the Court to be judgment debtors of FIRST SECURITY MORTGAGE  
7 COMPANY (a certified copy of said Judgment and Decree of Foreclos-  
8 ure is attached hereby as Exhibit "A").

9 On May 26, 1981, said property was sold to FIRST SECURITY  
10 MORTGAGE COMPANY at a sale conducted by the Utah County Sheriff's  
11 Department pursuant to said Judgment and Decree of Foreclosure  
12 entered in Case No. 55298. (Admitted in Answer of defendants,  
13 TANNER and HAMBLIN, paragraph 1).

14 On or about June 4, 1981, FIRST SECURITY MORTGAGE  
15 COMPANY transferred to defendants, GEORGE TANNER and IDA HAMBLIN,  
16 the right, title and interest of FIRST SECURITY MORTGAGE in and  
17 to the Certificate of Sale of Real Estate issued to FIRST SECURITY  
18 MORTGAGE COMPANY as purchaser at said Sheriff's Sale. Said transfer  
19 was made subject to any rights of redemption existing in connection  
20 with said Certificate of Sale. (Admitted in Answer of defendants,  
21 TANNER and HAMBLIN, paragraph 1.) A certified copy of said  
22 Assignment of Certificate of Sale is attached hereto as Exhibit "B".

23 On or about September 11, 1981, CHARLES MOORE, one of  
24 the judgment debtors in said Case No. 55298, conveyed his inter-  
25 est in said property to the plaintiff herein, GRANADA, INC.

26 A certified copy of said deed is attached hereto as  
27 Exhibit "C".

28 On or about November 23, 1981, plaintiff through its  
29 attorney, contacted Lt. KEITH BILLS of the Utah County Sheriff's  
30 Department, the officer who had conducted the said Sheriff's Sale  
31 in Case No. 55298, and informed Lt. BILLS that plaintiff was the  
32 successor in interest to a judgment debtor in said Case No. 55298

1           On April 28, 1981, a Judgment and Decree of Foreclosure  
2 was entered by the Fourth Judicial District Court in and for Utah  
3 County, Case No. 55298, entitled, FIRST SECURITY MORTGAGE COMPANY,  
4 Plaintiff, v. AMERICAN TIERRA CORPORATION, et al., Defendants, in  
5 which AMERICAN TIERRA CORPORATION and CHARLES C. MOORE were held  
6 by the Court to be judgment debtors of FIRST SECURITY MORTGAGE  
7 COMPANY (a certified copy of said Judgment and Decree of Foreclos-  
8 ure is attached hereby as Exhibit "A").

9           On May 26, 1981, said property was sold to FIRST SECURITY  
10 MORTGAGE COMPANY at a sale conducted by the Utah County Sheriff's  
11 Department pursuant to said Judgment and Decree of Foreclosure  
12 entered in Case No. 55298. (Admitted in Answer of defendants,  
13 TANNER and HAMBLIN, paragraph 1).

14           On or about June 4, 1981, FIRST SECURITY MORTGAGE  
15 COMPANY transferred to defendants, GEORGE TANNER and IDA HAMBLIN,  
16 the right, title and interest of FIRST SECURITY MORTGAGE in and  
17 to the Certificate of Sale of Real Estate issued to FIRST SECURITY  
18 MORTGAGE COMPANY as purchaser at said Sheriff's Sale. Said transfer  
19 was made subject to any rights of redemption existing in connection  
20 with said Certificate of Sale. (Admitted in Answer of defendants,  
21 TANNER and HAMBLIN, paragraph 1.) A certified copy of said  
22 Assignment of Certificate of Sale is attached hereto as Exhibit "B".

23           On or about September 11, 1981, CHARLES MOORE, one of  
24 the judgment debtors in said Case No. 55298, conveyed his inter-  
25 est in said property to the plaintiff herein, GRANADA, INC.

26           A certified copy of said deed is attached hereto as  
27 Exhibit "C".

28           On or about November 23, 1981, plaintiff through its  
29 attorney, contacted Lt. KEITH BILLS of the Utah County Sheriff's  
30 Department, the officer who had conducted the said Sheriff's Sale  
31 in Case No. 55298, and informed Lt. BILLS that plaintiff was the  
32 successor in interest to a judgment debtor in said Case No. 55298

1 and that plaintiff was ready to redeem the subject property by  
2 paying the amount bid at said Sheriff's Sale, plus 6% thereof.  
3 Thereupon, Lt. Bills indicated that he had learned that defendants,  
4 TANNER and HAMBLIN, were seeking more interest than that provided  
5 for under the Utah Rules of Civil Procedure, so that since the  
6 amount required to redeem the property was apparently in dispute,  
7 the Utah County Sheriff's office would not accept a tender of a  
8 sum in the amount of that bid at the Sheriff's Sale, plus 6%  
9 thereof. Lt. Bills thereupon instructed plaintiff to pay the  
10 amount bid at the Sheriff's Sale, plus 6%, to the Utah County  
11 Clerk pursuant to the procedure set forth in Rule 69(f), Utah  
12 Rules of Civil Procedure. (Affidavit of Lt. Keith Bills attached  
13 hereto as Exhibit "D").

14 On November 24, 1981, CHARLES MOORE and AMERICAN TIERRA  
15 CORPORATION, judgment debtors in said Civil Case No. 55298,  
16 assigned their rights of redemption from said Sheriff's Sale to  
17 the plaintiff herein, GRANADA, INC. (Certified copy of said Assign-  
18 ment is attached hereto as Exhibit "E").

19 On November 23, 1981, plaintiff, through its agent and  
20 attorney, procured a certified copy of the Judgment and Decree of  
21 Foreclosure in Civil No. 55298, from the office of the Utah  
22 County Clerk, and on November 24, 1982, caused an Affidavit to  
23 be prepared showing the amount plaintiff believed to actually be  
24 due in order to redeem said property. (Certified copy of said  
25 Affidavit is attached hereto as Exhibit "F").

26 On or about November 25, 1981, plaintiff, through its  
27 agent and attorney, again contacted Lt. Keith Bills of the Utah  
28 County Sheriff's Department and informed such officer that  
29 plaintiff was ready to tender the sum of \$84,366.00 to redeem  
30 said property and to support such tender with a certified copy of  
31 the Judgment and Decree of Foreclosure in Civil Case No. 55298,  
32 an acknowledged Assignment of the Right of Redemption from the

1 judgment debtors to the plaintiff, and an Affidavit of plaintiff's  
2 agent showing the amount then actually due on said lien, but was  
3 informed that such officer would not accept any tender because  
4 of the apparent dispute concerning plaintiff's position, and  
5 plaintiff was again directed by said officer to deposit the tender  
6 with the Utah County Clerk. (See Affidavit of David W. Broadbent  
7 attached hereto as Exhibit "G").

8 That on November 25, 1981, plaintiff deposited with  
9 the Utah County Clerk at Provo, Utah, the sum of \$84,366.00,  
10 together with debtors' Assignment of Interest to plaintiff  
11 (Exhibit "E"), and plaintiff's Affidavit of the amount due  
12 (Exhibit "F"). (A copy of Deposit Receipt No. 40612 from the  
13 Utah County Clerk's office dated November 25, 1981, is attached  
14 hereto as Exhibit "H").

15 On November 25, 1981, plaintiff caused a Petition for  
16 an order determining the amount required for redemption to be  
17 filed in said Civil Case No. 55298 (a copy of said Petition is  
18 attached hereby as Exhibit "I").

19 On the 9<sup>th</sup> day of February, 1982, the said  
20 Petition and Order to Show Cause issued in connection therewith  
21 were ordered dismissed by the above entitled Court on the grounds  
22 that none of the parties to the present action had been made  
23 parties to the said Civil No. 55298. (A copy of said Order is  
24 attached hereby as Exhibit "J").

25 ARGUMENT

26 POINT 1

27 PLAINTIFF IS ENTITLED TO REDEEM THE PROPERTY FROM THE  
28 SHERIFF'S SALE.

29 Section 78-37-6, Utah Code Annotated 1953, as amended  
30 provides that sales of real estate under judgments of foreclosure  
31 or mortgages and liens are subject to redemption as in case of  
32 sales under executions generally. Rule 69(f)(1) provides for  
those who may redeem and states that:

1 "Property sold subject to redemption or any part  
2 sold separately may be redeemed by the following  
3 persons or their successors in interest: (1) The  
4 judgment debtor." (underlining added)

5 In this case, the plaintiff is the successor in interest  
6 to judgment debtors in Civil Case No. 55298 and thus have the  
7 absolute right to redeem the property. (See Exhibit "C"; Exhibit  
8 "E"; Tanner vs. Lawler, 6 Utah 2d 84, 205 P. 2d 882; Downey State  
9 Bank vs. Major-Blakeney Corporation, 578 P. 2d 1286.

10 POINT II

11 PLAINTIFF'S PAYMENT OF REDEMPTION FUNDS TO THE UTAH  
12 COUNTY CLERK WAS PROPER AND EFFECTIVE TO PERFECT REDEMPTION.

13 Rule 69(f)(2), Utah Rules of Civil Procedure provides  
14 that redemption may be made by making payment to the officer who  
15 made the sale.

16 In this case the sale was made and conducted by Lt. Keith  
17 Bills of the Utah County Sheriff's Department. (See Exhibit "D").  
18 Contact was made with Lt. Bills for the purpose of arranging for  
19 redemption payment, but plaintiff, through its agents, was informed  
20 that by reason of an apparent dispute as to the amount which would  
21 be necessary to effectively make redemption, payment would have  
22 to be made to the Utah County Clerk, as provided under the Rules  
23 of Civil Procedure. Rule 69(f)(3), Utah Rules of Civil Procedure  
24 does provide that in the event of a disagreement concerning any  
25 sum to be paid for redemption, the person seeking redemption may  
26 pay the amount necessary for redemption to the Court out of which  
27 the execution or order authorizing the same was issued. As is  
28 evident by Exhibit "H", the sum of \$84,366.00 was paid by plain-  
29 tiff to the Utah County Clerk, as Clerk of the Fourth Judicial  
30 District Court from which the Judgment and Decree of Foreclosure  
31 issued in Civil Case No. 55298.

32 While the plaintiff did not attempt to make an actual  
physical delivery of the funds to Lt. Bills as the officer who  
conducted the sale, it is obvious from the Affidavit of Lt. Bills

(Exhibit "D") that such a gesture would have been useless, so that the actual tender and payment of the funds into the Clerk of the Court was sufficient. (See United States vs. Loosley, 551 P. 2d 506; Hansen vs. Christensen, 545 P. 2d 1152; Romero vs. Schmidt, 15 Utah 2d 300, 392 P. 2d 37; 74 Am. Jur. 2d 547).

POINT III

SUMMARY JUDGMENT IS APPROPRIATE IN THIS CASE.

Rule 56 of the Utah Rules of Civil Procedure provides that:


"The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law."

In this case the pleadings, exhibits and affidavits on file do show facts about which there can be no genuine issue which clearly demonstrate that the plaintiff is a proper party to be entitled to redeem the property in question and that the statutory requirements for redemption were timely taken, but that the defendants have wrongfully failed to issue an appropriate redemption certificate.

CONCLUSION

Plaintiff is entitled to partial summary judgment in this matter directing the defendants to issue and deliver a redemption certificate to the plaintiff in consideration of the funds paid by the plaintiff to the Clerk of the Court and now held by the Utah County Treasurer.

RESPECTFULLY SUBMITTED,

  
Cullen Y. Christensen, for  
CHRISTENSEN, TAYLOR & MOODY  
Attorneys for Plaintiff  
55 East Center Street  
P.O. Box 1466  
Provo, UT 84603



CERTIFICATE OF MAILING

Copy of the foregoing, together with copies of the Exhibits therein indicated, were mailed, postage prepaid, to Edwin J. Skeen, VAN COTT, BAGLEY, CORNWALL & MCCARTHY, attorneys for defendants, George Tanner and Ida Tanner Hamblin, 50 South Main Street, Suite 1600, Salt Lake City, Utah, 84144, and to Noall T. Wootton, Utah County Attorney, 51 South University Avenue, Provo, Utah 84601, this 10<sup>th</sup> day of August, 1982.

  
COLLEEN Y. CHRISTENSEN, Attorney

FEB 28 1962

FEB 28 1962

72P

all

JAMES L. WHEEL,  
 DOUGLAS MATHEMORT and  
 PATRICK B. NOLAN of  
 RAY, QUINNEY & NEBEKER  
 Attorneys for Plaintiff  
 92 North University Avenue  
 Provo, Utah 84601  
 Telephone: 226-7210

## IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

## STATE OF UTAH

-----00000-----

FIRST SECURITY MORTGAGE	:	
COMPANY, a Utah corporation,	:	JUDGMENT AND DECREE
Plaintiff,	:	OF FORECLOSURE
v.	:	
AMERICAN TIERRA CORPORATION,	:	Civil No. 55298
a Utah corporation; EMPIRE	:	
DEVELOPMENT CORPORATION, a	:	
Utah corporation; MOORE	:	
DEVELOPMENT CORPORATION, a	:	
Utah corporation; CHARLES C.	:	
MOORE, and MARGARET W. MOORE,	:	
Defendants.	:	

-----00000-----

The above-entitled matter came on regularly before the Court on plaintiff's Motion for Summary Judgment; the plaintiff appearing herein by and through PATRICK B. NOLAN of RAY, QUINNEY & NEBEKER, its attorneys of record; and it further appearing that no response to plaintiff's Motion for Summary Judgment having been filed by defendants; and the Court being fully advised in the premises, and the Court having granted plaintiff's Motion for Summary Judgment, it is, therefore, hereby ORDERED, ADJUDGED and DECREED:

1. That the Deed of Trust made, executed, and delivered by the defendants, AMERICAN TIERRA CORPORATION, a Utah corporation, EMPIRE DEVELOPMENT CORPORATION, a Utah corporation, and MOORE DEVELOPMENT CORPORATION, a Utah corporation, as

Trustors, on February 3, 1978, and duly recorded on February 6, 1978, in the Office of the County Recorder of Utah County, State of Utah, in favor of FIRST SECURITY MORTGAGE COMPANY, constitutes a valid first lien upon the real property and improvements described therein, with priority over and superior to all interests, liens, and equities of redemption in and to the premises and property described in said Deed of Trust claimed by any and all other parties hereto.

2. That said Deed of Trust be foreclosed as a mortgage, that an Order of Sale may issue, and that the property be sold by the Sheriff of Utah County, according to law and the practice of this Court, and that the proceeds of said sale shall be applied in payment, first, of the amount due to FIRST SECURITY MORTGAGE COMPANY, as Beneficiary under said Deed of Trust, including attorney's fees, costs, and charges, and that the excess, if any there be, be paid over by the Sheriff of Utah County to the Court, for such distribution as the Court may order; and that all rights, claims, or equities of redemption of said premises and property, and every part thereof, except such equities of redemption as may be provided by law, shall be barred and foreclosed as to all other purchasers, mortgagees, encumbrancers, lienholders, judgment creditors, or other parties hereto.

3. That the amount due and owing to FIRST SECURITY MORTGAGE COMPANY is the principal sum of Sixty-Three Thousand Five Hundred and 00/100 Dollars (\$63,500.00), together with interest and charges thereon in the further sum of Eleven Thousand Eight Hundred Twenty-Six and 87/100 Dollars (\$11,826.87), computed to April 30, 1981, with attorney's fees in the sum of Three Thousand and 00/100 Dollars (\$3,000.00), and costs expended in the further sum of Three Hundred Thirty-Four and 05/100 Dollars (\$334.05), for a total claim of Seventy-Eight Thousand Six Hundred Sixty and 92/100 Dollars (\$78,660.92), computed to April 30, 1981, with interest accruing on the principal sum at the rate of Thirty-One

... to collect \$100 per acre thereafter, until paid, including with any further costs incurred in connection with this action, and that judgment therefor be, and the same is hereby, awarded to FIRST SECURITY MORTGAGE COMPANY, against AMERICAN TIERRA CORPORATION, EMPIRE DEVELOPMENT CORPORATION, MOORE DEVELOPMENT CORPORATION, CHARLES C. MOORE, AND MARGARET W. MOORE, and each of them, jointly and severally.

4. That the Deed of Trust held by FIRST SECURITY MORTGAGE COMPANY, on the property hereinafter described, constitutes a good and sufficient first and prior lien upon the premises described as follows:

Beginning on the North right of way line of 2200 North Street at a point which is 1052.12 feet North and 548.93 feet East from the South quarter corner of Section 25, Township 6 South, Range 7 East, Salt Lake Base and Meridian; and running thence North 87°17'24" West 204.16 feet along said right of way North 1°26'08" West 427.23 feet; thence South 87°17'24" East 204.49 feet; thence South 1°26'08" East 312.69 feet; thence South 1°16'14" East 114.52 feet to the point of beginning.

That, following payment in full satisfaction of the claim and judgment of FIRST SECURITY MORTGAGE COMPANY, as aforesaid, from the proceeds of the sale, the excess proceeds, if any, be paid over by the Sheriff of Utah County to the Court, for such distribution as the Court may order.

5. That if the net proceeds of said sale are not sufficient to satisfy in full the claim of any party or parties herein, as heretofore set forth, then such party or parties shall be, and it is so they are hereby, awarded judgment for any resulting deficiency against the defendants, AMERICAN TIERRA CORPORATION, EMPIRE DEVELOPMENT CORPORATION, MOORE DEVELOPMENT CORPORATION, CHARLES C. MOORE, and MARGARET W. MOORE, and each of them, jointly and severally.

6. That all other defendants, and all persons claiming by, through, or under them, or any of them, be, and they are hereby, forever barred and foreclosed of and from any right,

title, interest, or estate, and all equities of redemption, in or to said property, save and excepting such right of redemption as may be provided by law, and that FIRST SECURITY MORTGAGE COMPANY, or any other party to this action, may become a purchaser at said sale.

DATED this 28<sup>th</sup> day of April, 1981.

BY THE COURT:

Sharon B. Kelly  
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 28 day of April, 1981, I mailed, postage pre-paid, a copy of the foregoing Judgment and Decree of Foreclosure to ROY B. MOORE of SESSIONS, MOORE & SMITH, 300 First Federal Plaza, 505 East 200 South, Salt Lake City, Utah 84102.

Patricia B. Wilson  
Secretary

FILED IN THE CLERK'S OFFICE OF THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF UTAH, SALT LAKE COUNTY, UTAH, THIS 10<sup>th</sup> DAY OF APRIL, 1981, AT 10:46 AM. WITNESS MY HAND AND SEAL OF SAID COURT THIS 10<sup>th</sup> DAY OF APRIL, 1981. WILLIAM R. HUISMAN, CLERK. Sharon B. Kelly COURT

ASSIGNMENT OF CERTIFICATE OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That FIRST SECURITY MORTGAGE COMPANY, a Utah corporation, with its principal place of business located in Salt Lake City, Salt Lake County, State of Utah, in consideration of the sum of TEN DOLLARS (\$10.00) and other adequate consideration, to it in hand paid, the receipt and sufficiency whereof are hereby acknowledged, has sold, and by these presents does bargain, sell, assign, transfer, quitclaim, and set over unto \_\_\_\_\_

George Tanner and Ida Hamblin, as tenants in common

\_\_\_\_\_, of Orem, Utah County, State of Utah, all its right, title, interest, and equity in and to that certain Certificate of Sale of Real Estate Under Foreclosure bearing date the 26th day of May, 1981, and filed for record May 27, 1981, as Entry No. 15290, and recorded in the Office of the Recorder of Utah County, State of Utah, in Book 1915 at Page 770, which Certificate of Sale was issued by the Fourth Judicial District Court in the civil case numbered 55298, entitled "FIRST SECURITY MORTGAGE COMPANY, a Utah corporation, Plaintiff, vs. AMERICAN TIERRA CORPORATION, a Utah corporation, et al., Defendants", and describing the following real property situate in Utah County, State of Utah, to-wit:

Beginning on the North right of way line of 2200 North Street at a point which is 1052.12 feet North and 548.93 feet East from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; and running thence North 87°17'24" West 204.16 feet along said right of way North 1°26'08" West 427.23 feet; thence South 87°17'24" East 204.49 feet; thence South 1°26'08" East 312.69 feet; thence South 1°16'14" East 114.52 feet to the point of beginning.

TO HAVE AND TO HOLD, the said Certificate of Sale, and the rights of the assignor in and to the premises and property

EXHIBIT "B"

therein described, subject to any rights of redemption, unto the said George Tanner and Ida Hamblin, as tenants in common, and their successors and assigns, together with all the right, title, and interest of the assignor in and to the premises and property therein described.

The assignor hereby covenants and warrants that it is the lawful owner and holder of said Certificate of Sale, and that it has a good and perfect right to sell and assign the same, and that it will warrant and defend the title thereto against the lawful claims and demands of all persons whomsoever, subject to any right of redemption inherent therein.

This is an absolute transfer of title to said Certificate of Sale, in effect as well as in form, and is not intended as a mortgage, pledge, or other trust or security transfer of any kind whatsoever.

IN WITNESS WHEREOF, the assignor has caused these presents to be executed this 4<sup>th</sup> day of June, 1981.

FIRST SECURITY MORTGAGE COMPANY,  
a Utah corporation

By: Henry S. Kesler  
Henry S. Kesler  
Executive Vice President

STATE OF UTAH            )  
                              : ss.  
COUNTY OF SALT LAKE )

On the 4th day of June, 1981, personally appeared before me HENRY S. KESLER, who being by me duly sworn, did say that he is the Executive Vice President of First Security Mortgage Company, a Utah corporation, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and the said HENRY S. KESLER duly acknowledged to me that said corporation executed the same.

Michelle Smith  
Notary Public  
Residing at: Salt Lake City, Utah

My Commission Expires:  
January 1, 1987

2681

55278

In consideration of the sum of 1500.00 Dollars, to the said Charles Moore of the County of Wasatch, State of Utah, Grantor, warrants and covenants, to the said Charles Moore of the County of Wasatch, State of Utah, Corporation, Grantee, the real property described in the instrument of the County of Wasatch, State of Utah, Grantee, and by reference made to the instrument of the County of Wasatch, State of Utah, Grantee, in Utah County, State of Utah.

Subject to:

(i) Taxes for the year 1981.

(ii) Trust Deed dated February 3, 1979 in favor of First Security Mortgage Company, recorded on February 8, 1979 as Entry No. 4721 in Book 1014 at Page 154.

(iii) Trust Deed dated August 28, 1979 in favor of Casper's First Thrift, recorded on November 27, 1979 as Entry No. 46939 in Book 1794 at Page 12.

(iv) Trust Deed dated April 19, 1978 in favor of Casper's State Thrift and Loan Company, recorded on May 3, 1978 as Entry No. 14421 in Book 1442 at Page 383.

(v) Trust Deed dated February 23, 1980 in favor of Roy B. Moore, Trustee for Blaine Moore and Alice A. Moore, recorded April 29, 1980 as Entry 14385 in Book 1624 at Page 539.

WITNESSED this 11 day of Sept, 1981.

Charles Moore  
Charles Moore, 1707,  
Township Square

WITNESSED BY:

Notary Public for the State of Utah

My Comm. Expires 12/31/82

On the 11th day of September, 1981, Charles Moore, known by name to be the signer of the foregoing instrument, duly acknowledged to me that he executed the same.

By Charles Moore Signature  
Residing in Wasatch Co.

NOTARY PUBLIC



PART 1

Beginning on the North right of way line of 1933 Highway No. 1 at a point which is 1052.12 feet North and 548.93 feet East from the quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian, thence North 87 deg. 17'24" West 195.43 feet along said right of way line to the point of tangency with a 517.67 foot radius curve to the left, thence Westerly 124.36 feet along the arc of said curve and along said right of way line, thence North 1 deg. 26'08" West 442.14 feet, thence South 87 deg. 17'24" East 513.00 feet; thence South 1 deg. 26'08" East 312.89 feet, thence South 1 deg. 16'14" East 114.52 feet to the point of beginning.

PART 2

Beginning at a point North 1364.98 feet and East 536.41 feet (Based upon the Utah State Plane Coordinate System, Utah Central Zone) from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 1 deg. 26'08" East 85.80 feet; thence South 87 deg. 17'24" West 509.01 feet, thence North 1 deg. 26'08" West 85.80 feet, thence South 87 deg. 17'24" East 509.01 feet to the point of beginning.

PART 3

Beginning at a point North 1364.98 feet and East 536.41 feet (Based upon the Utah State Plane Coordinate System, Utah Central Zone) from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 87 deg. 17'24" West 509.01 feet; thence North 1 deg. 26'08" West 85.80 feet, thence South 87 deg. 17'24" East 509.01 feet, thence South 1 deg. 26'08" East 85.80 feet to the point of beginning.

STATE OF UTAH )  
COUNTY OF UTAH )

I, THE UNDERSIGNED, RECORDER OF UTAH COUNTY, UTAH,  
DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS A  
TRUE COPY OF THE ORIGINAL RECORD OF DOCUMENT IN THE  
OFFICE OF THE RECORDER OF UTAH COUNTY, UTAH, FILED IN  
BOOK 1737 PAGE 117-118.

WITNESSED MY HAND AND OFFICE THIS 28th day of November, 1981.

\_\_\_\_\_  
CLERK & REC. RECORDER

DEPUTY

28521

28521

Copy  
Not  
Accepted  
Theresa De la Cruz

WILLIAM F. BROADBENT  
Accounting, Inc. 16609, Inc.  
9 Exchange Place, Suite 100  
Salt Lake City, Utah 84111  
Telephone: (801) 364-7913

IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR UTAH COUNTY  
STATE OF UTAH

GRANADA, INC., a Utah  
Corporation,

Plaintiff,

vs.

GEORGE TANNER, IDA TANNER  
HAMBLIN, and STANLEY H. WALKER,  
Utah County Treasurer,

Defendants.

AFFIDAVIT  
OF  
LT. KEITH BILLS

Civil No. 55298

Keith Bills, being first duly sworn upon oath  
states:

1. That he is an officer in the Utah County Sheriff's Office.

2. That on or about November 23, 1981, he had a telephone conversation with Mr. David K. Broadbent. The conversation was initiated by Mr. Broadbent, and the only parties to the conversation were Mr. Broadbent and Affiant.

3. That the substance of the conversation was as follows:

Mr. Broadbent informed Affiant that Mr. Broadbent was an attorney representing Granada, Inc., and that Granada, Inc. was the successor-in-interest to American Tierra, the owner of property sold by Affiant at sheriff's sale. Mr. Broadbent indicated that Granada, Inc. was ready to redeem the property and that he had asked the attorney for

George Tanner and Ida T. Hamblin ("Tanner and Hamblin") what amount would be required for redemption of the property. Mr. Broadbent also informed Affiant that Tanner and Hamblin refused to give an amount and in fact disputed the right of Granada, Inc. to redeem the property.

Affiant responded that he had heard that Tanner and Hamblin were trying to obtain interest in addition to the amount provided in Rule 69(f), Utah Rules of Civil Procedure, and that in any event since the amount was not agreed upon he would be unable to accept the funds tendered. Affiant informed Mr. Broadbent that he should deposit the amount of eighty four thousand three hundred sixty-six dollars (\$84,366.00) (the amount paid by the purchaser at sale plus 6%) with the Utah County Clerk, since that is the procedure required by the Utah Rules of Civil Procedure when there is a dispute regarding redemption.

The foregoing was the substance of the conversation.

DATED this 29 day of January, 1982.

Lt. Keith Bills  
Lt. Keith Bills

STATE OF UTAH )  
COUNTY OF UTAH : ss.  
(~~Utah~~)

Subscribed and sworn to before me this 29<sup>th</sup> day of January, 1982.

My Commission Expires:  
6-16-84

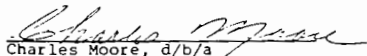
Robert R. Botwin  
NOTARY PUBLIC

Residing in: Alpine Utah

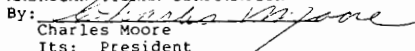
*twist*

ASSIGNMENT OF RIGHT OF REDEMPTION

For and in consideration of Ten Dollars and other valuable considerations, Charles Moore, d/b/a Township Square, and American Tierra Corporation, hereby assign to Granada, Inc., a Utah Corporation, the right to redeem the real property described in Exhibit "A" attached hereto and by this reference made a part hereof from the sheriff's sale conducted pursuant to a Judgment Decree and Foreclosure entered by the Fourth Judicial District Court of Utah County, State of Utah on April 28, 1981 in Civil Case Number 55298, and from a Judgment and Decree of Foreclosure entered by the above Court on August 19, 1981 in Civil Case Number 57270.

  
Charles Moore, d/b/a  
Township Square

AMERICAN TIERRA CORPORATION

By:   
Charles Moore  
Its: President

STATE OF UTAH )

:ss.

COUNTY OF SALT LAKE)

On the 24th day of November, 1981, Charles Moore, known to me to be the signer of the foregoing Assignment of Right of Redemption duly acknowledged to me that he executed the same, both individually and as President of AMERICAN TIERRA CORPORATION, and said Charles Moore certified to me that AMERICAN TIERRA CORPORATION executed the same.



My Commission Expires:

Sept 15, 1984

Erin Tanner

NOTARY PUBLIC

Residing in: Salt Lake

PARCEL 1

Beginning on the North right of way line of 2200 North Street at a point which is 1052.12 feet North and 548.93 feet East from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian, thence North 87 deg. 17'24" West 385.43 feet along said right of way line to the point of tangency with a 517.67 foot radius curve to the left; thence Westerly 124.34 feet along the arc of said curve and along said right of way line, thence North 1 deg. 26'08" West 442.14 feet; thence South 87 deg. 17'24" East 510.00 feet; thence South 1 deg. 26'08" East 312.69 feet; thence South 1 deg. 16'14" East 114.52 feet to the point of beginning.

PARCEL 2

Beginning at a point North 1564.98 feet and East 536.41 feet (Based on the Utah State Plane Coordinate System, Utah Central Zone) from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian, thence South 1 deg. 26'08" East 85.80 feet; thence North 87 deg. 17'24" West 509.01 feet; thence North 1 deg. 26'08" West 85.80 feet; thence South 87 deg. 17'24" East 509.01 feet to the point of beginning.

PARCEL 3

Beginning at a point North 1564.98 feet and East 536.41 feet (Based upon the Utah State Plane Coordinate System, Utah Central Zone) from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian, thence North 87 deg. 17'24" West 509.01 feet; thence North 1 deg. 26'08" West 85.80 feet; thence South 87 deg. 17'24" East 509.01 feet; thence South 1 deg. 26'08" East 85.80 feet to the point of beginning.

STATE OF UTAH, CLERK OF THE DISTRICT COURT  
COUNTY OF KANE  
I, THE UNDERSIGNED, CLERK OF THE DISTRICT COURT  
OF THE COUNTY OF KANE, DO HEREBY CERTIFY THAT THE  
ABOVE AND FOREGOING IS A TRUE AND FULL COPY OF  
THE ORIGINAL INSTRUMENT ON FILE IN MY OFFICE AS SUCH  
DUE.  
WITNES MY HAND AND SEAL OF SAID COURT THIS  
10th DAY OF August, 1980  
WILLIAM F. JONES, CLERK  
George A. Thompson, DEPUTY

David K. Broadbent  
 Attorney for Granada, Inc.  
 #9 Exchange Place, Suite 100  
 Salt Lake City, Utah 84111  
 Telephone: (801) 364-7913

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

FIRST SECURITY MORTGAGE  
 COMPANY, a Utah corporation,

Plaintiff,

vs.

AMERICAN TIERRA CORPORATION,  
 a Utah corporation; EMPIRE  
 DEVELOPMENT CORPORATION, a  
 Utah corporation; MOORE  
 DEVELOPMENT CORPORATION, a  
 Utah corporation; CHARLES C.  
 MOORE, and MARGARET W. MOORE,

Defendants.

AFFIDAVIT

Civil No. 55298

Pursuant to Rule 69(f)(2)(3) of the Utah Rules of  
 Civil Procedure, Affiant, David K. Broadbent, deposes and  
 says:

1. That he is the attorney for Granada, Inc.
2. That he is of adult years and competent to  
 make this Affidavit.
3. That the amount required by Rule 69(f)(3),  
 Utah Rules of Civil Procedure, for Granada, Inc. to redeem  
 the real property sold at the sheriff's sale held on May 26,  
 1981 pursuant to the Judgment and Decree of Foreclosure  
 entered in the above-entitled action is \$84,366.00, computed  
 as follows:

Amount bid at sheriff's sale of	\$79,590.57
Six percent (6%) of the above amount	<u>4,775.43</u>
TOTAL	\$84,366.00

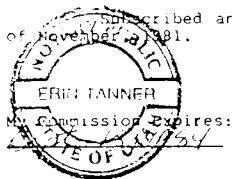
I, [Name], Attorney at Law, am aware of additional sums due the  
[Name], [Address], Utah Rules of Civil  
Procedure.

DATED this 24<sup>th</sup> day of November, 1981.

David K. Broadbent  
David K. Broadbent  
Attorney for Granada, Inc.

STATE OF UTAH )  
COUNTY OF SALT LAKE ) ss.

Subscribed and sworn to before me this 24<sup>th</sup> day  
of November, 1981.



Erik Tanner  
NOTARY PUBLIC  
Residing in: Salt Lake

10th  
11th  
12th  
13th  
14th  
15th  
16th  
17th  
18th  
19th  
20th  
21st  
22nd  
23rd  
24th  
25th  
26th  
27th  
28th  
29th  
30th  
31st



1 CULLEN Y. CHRISTENSEN  
2 CHRISTENSEN, TAYLOR & MOODY  
3 Attorneys for Plaintiff  
4 55 East Center Street  
5 P O Box 1466  
6 Provo, Utah 84603  
7 Telephone: (801) 373 2721

8 IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
9 STATE OF UTAH

10 GRANADA, INC., a Utah  
11 corporation,

12 Plaintiff,

Civil No. 59808

13 vs.

A F F I D A V I T

14 GEORGE TANNER, et al ,

15 Defendants.

16 STATE OF UTAH )  
17 ) SS  
18 COUNTY OF SALT LAKE )

19 DAVID K. BROADBENT, being first duly sworn, deposes and  
20 says:

21 1. That he is one of the attorneys for the plaintiff  
22 above named and at all times herein mentioned was authorized to act  
23 on behalf of the plaintiff in matters referred to herein.

24 2. That he makes this affidavit on behalf of the plain-  
25 tiff in support of plaintiff's Motion for Summary Judgment, and  
26 that he has personal knowledge of the matters herein set forth.

27 3. That on or about the 23rd of November, 1981, as  
28 agent for the plaintiff, he procured a certified copy of the  
29 Judgment and Decree of Foreclosure in Civil Case No. 55298,  
30 Fourth District Court, Utah County, from the office of the Utah  
31 County Clerk, and on November 24, 1982, he caused to be issued  
32 an Affidavit over his signature showing the amount which the  
plaintiff believed to actually be due in order to redeem the  
property from foreclosure in Civil Case No. 55298.

1                   4. That on or about the 23rd of November, 1981, affiant  
2 contacted Lt. Keith Bills of the Utah County Sheriff's office, and  
3 informed Officer Bills that the plaintiff, as a successor in inter-  
4 est to judgment debtors in Civil Case No. 55298, was prepared to  
5 redeem the property involved from foreclosure and the Sheriff's  
6 Sale which had been conducted by Officer Bills by paying the sum  
7 of \$84,366.00, which sum was the amount paid by the purchaser at  
8 such sale, plus 6% thereof.

9                   5. That affiant was informed by Officer Bills that such  
10 a tender and payment would not be accepted by Officer Bills by  
11 reason of an apparent dispute as to the amount required for  
12 redemption, and Officer Bills suggested that payment and tender  
13 of such funds be made to the Fourth Judicial District Court by  
14 making payment to the Utah County Clerk as clerk of the Court, and  
15 as provided in the Utah Rules of Civil Procedure.

16                   6. That on or about the 25th of November, 1981, affiant  
17 as agent and attorney for the plaintiff, again contacted Lt.  
18 Keith Bills and stated that the plaintiff was prepared to pay  
19 the sum of \$84,366.00 to redeem the subject property in Civil Case  
20 No. 55298, at which time affiant was again informed that Officer  
21 Bills would not accept any such tender for the reasons previously  
22 stated and again affiant was directed to make payment and deposit  
23 the funds with the Clerk of the Fourth Judicial District Court at  
24 Provo, Utah.

25                   7. That affiant thereupon, on behalf of the plaintiff,  
26 did on November 25, 1981, deposit with the Utah County Clerk the  
27 sum of \$84,366.00, together with affiant's Affidavit as to the  
28 amount necessary to be paid to redeem such property, together  
29 with an Assignment of the judgment debtor's interest to the plain-  
30 tiff, and affiant did receive from the Utah County Clerk Receipt  
31 No. 40612, for the sum of \$84,366.00.

32                   8. That affiant did on the said date of November 25,  
1981, further file with the Clerk of said Court a Petition for

1 an order determining the amount required for redemption in  
2 Civil Case No. 55298.

3 9. That said Petition was subsequently dismissed by  
4 said Court during or about the month of January, 1982, on the  
5 grounds that neither the plaintiff, nor the defendants named in  
6 this action were parties to Civil No. 55298 in the District Court  
7 of Utah County, Utah.

8  
9  
10 DAVID R. BROADBENT

11 SUBSCRIBED and sworn to before me this 4th day of  
12 August, 1982.

13  
14 NOTARY PUBLIC

15 My Commission Expires:

16 Residing at:

UTAH COUNTY  
PROVO, UTAH

**Phone 373-5510**

David Broadbent

Reported at cost 8436.00

528

40612

1. THE UNDERSIGNED, CLERK OF THE DISTRICT COURT OF UTAH COUNTY, UTAH, DO HEREBY CERTIFY THAT THE ANNEXED AND FOREGOING IS A TRUE AND FULL COPY OF AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH CLERK

WITNESS MY HAND AND SEAL OF SAID COURT THIS

10<sup>th</sup> DAY OF August 1982  
WILLIAM P. HUIJSM, CLERK

Shirley L. Paul

Wagon to Wagon - 1000

49

EXHIBIT 'H'

51

David K. Broadbent  
Attorney for Granada, Inc.  
#9 Exchange Place, Suite 100  
Salt Lake City, Utah 84111  
Telephone: (801) 364-7913

1981 NOV 25 AM 10:55

WILSON & HUGHES, P.C.  
DEPT. 1

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

FIRST SECURITY MORTGAGE  
COMPANY, a Utah corporation,

Plaintiff,

vs.

AMERICAN TIERRA CORPORATION,  
a Utah corporation; EMPIRE  
DEVELOPMENT CORPORATION, a  
Utah corporation; MOORE  
DEVELOPMENT CORPORATION, a  
Utah corporation, CHARLES C.  
MOORE, and MARGARET W. MOORE,  
Defendants.

PETITION FOR AN  
ORDER DETERMINING  
THE AMOUNT REQUIRED  
FOR REDEMPTION

Civil No. 55298

Petitioner, Granada, Inc., a Utah Corporation, respectfully submits its petition for an order determining the amount required for redemption. In support of its petition, Petitioner represents as follows:

1. Concurrently with the filing of this petition, Petitioner deposited with the Clerk of the Court the sum of \$84,366.00, together with the Affidavit of David K. Broadbent, a certified copy of the Judgment and Decree of Foreclosure in the above-entitled case, and copies of a warranty deed and Assignment of Right of Redemption executed by American Tierra Corporation and Charles Moore.

2. Petitioner has requested George Tanner and Ida T. Hamblin (hereinafter "Tanner") the assigners of the purchaser of the property at the sheriff's sale to provide a statement of amounts due to Tanner in order to redeem the property. Tanner has not answered such requests, as a result, Petitioner has deposited the amount which is undisputed into this Court.

EXHIBIT 'I'

WHEREFORE, Petitioner prays that the Court enter an Order requiring Tanner to file with this Court and serve upon Petitioner a statement setting forth the amounts claimed by Tanner to be due in order to redeem the property, that the Court fix a time for hearing such objections as Petitioner may have to such claimed amounts, and for such further relief as the Court may deem just.

DATED this 27th day of November, 1981.

David K. Broadbent  
David K. Broadbent  
Attorney for Granada, Inc.

FILED OCT 11 1981  
COUNTY CLERK  
I, THE UNDERSIGNED CLERK OF THE DISTRICT COURT  
OF UTAH COUNTY, UTAH, DO HEREBY CERTIFY THAT THE  
ABOVE AND FOREGOING IS A TRUE AND FULL COPY OF  
AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH  
CLERK.  
WITNESS MY HAND AND SEAL OF SAID COURT THIS  
10th DAY OF August 1982  
WILLIAM B. HUGHES, CLERK  
BY George J. Jorgensen DEPUTY

VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
Edwin J. Skeen  
Attorneys for Tanner and Hamblin  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144  
Telephone: 532-3333

1982 FEB -9 PM 2 41

WILLIAM H. HUGHES, CLERK

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

FIRST SECURITY MORTGAGE  
COMPANY, a Utah Corporation,

Plaintiff,

vs.

AMERICAN TIERRA CORPORATION,  
a Utah Corporation; EMPIRE  
DEVELOPMENT CORPORATION, a  
Utah Corporation; MOORE  
DEVELOPMENT CORPORATION, a  
Utah Corporation; CHARLES C.  
MOORE, and MARGARET W. MOORE,

Defendants.

ORDER

Civil No. 55298

The order to show cause, dated December 23, 1981, to require George Tanner and Ida T. Hamblin to appear and show cause why they should not accept a tender to redeem the property described in the complaint, having come on regularly for hearing before Honorable George E. Ballif, one of the judges of the above entitled court, and it appearing that George Tanner and Ida T. Hamblin are not parties to this suit,

IT IS ORDERED that the Order to Show Cause, dated December 23, 1981, be and it is hereby vacated and set aside, and ~~the petition for an order determining the amount required for redemption, filed November 25, 1981, is dismissed.~~ *gch*

DATED: Feb. 9, 1982

*George E. Ballif*  
District Judge

WILLIAM H. HUGHES, CLERK OF THE DISTRICT COURT  
COUNTY OF UTAH, DO HEREBY CERTIFY THAT THE  
ABOVE SIGNED DOCUMENT IS A TRUE AND FULL COPY OF  
AN ORIGINAL DOCUMENT ON FILE IN MY OFFICE AS SUCH  
CLERK.  
WITNESS MY HAND AND SEAL OF SAID COURT THIS  
10<sup>th</sup> DAY OF August 1982  
WILLIAM H. HUGHES, CLERK  
*William H. Hughes* DEPUTY

JAN COTT, BAGLEY, CORNWALL & MCCARTHY  
EDWIN J. SKEEN  
Attorneys for Defendants  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144  
Telephone 532-3333

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

GRANADA, INC., a Utah	)	
Corporation,	)	
	)	RESPONSE TO MOTION
Plaintiff,	)	FOR PARTIAL SUMMARY
	)	JUDGMENT
vs.	)	
	)	
GEORGE TANNER, et al.,	)	Civil No. 59808
	)	
Defendants.	)	

THE DEFENDANTS ABOVE-NAMED Contend that the plaintiff's Motion for a Partial Summary Judgment should be denied for the following reasons:

1. No payment was tendered or made to "...the person from whom the property is being redeemed or for him to the officer who made the sale as required by Rule 69(f)(2), Utah Rules of Civil Procedure.

2. Payment to the court out of which the order authorizing the sale was issued, is permitted only if there is dis-agreement as to whether any sum demanded for redemption is reasonable and proper and there was no disagreement.

3. The motion must be denied because issues of material fact are raised by the affidavits of Bills, Tanner, and Mrs. Hamblin.

4. There is no showing by the plaintiff that there was a disagreement as to the sum demanded for redemption.

This response is based upon the files and records in this case and on the affidavits of George Tanner and Ida T. Hamblin, attached hereto.

LAW OFFICE OF  
JAN COTT BAGLEY CORNWALL & MCCARTHY  
A PROFESSIONAL CORPORATION  
SUITE 1600 50 SOUTH MAIN STREET  
SALT LAKE CITY UTAH 84144

53  
55



Dated September 10, 1982

VAN COTT, BAGLEY, CORNWALL & MCCARTHY

By

  
E. J. SKEEN

Attorneys for Defendants

CERTIFICATE OF MAILING

Copy of the foregoing Response to Motion for Partial Summary Judgment, together with the attached Affidavits of George Tanner and Ida T. Hamblin and Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment, mailed, postage prepaid, this 23<sup>rd</sup> day of September, 1982, to:

Cullen Y. Christensen  
CHRISTENSEN, TAYLOR & MOODY  
55 East Center Street  
P. O. Box 1466  
Provo, Utah 84603

Noall T. Wootton  
Utah County Attorney  
51 South University Avenue  
Provo, Utah 84601



VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
Edwin J. Skeen  
Attorneys for Defendants  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144  
Telephone 532-3333

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

GRANADA, INC., a Utah  
Corporation,  
  
Plaintiff,  
  
vs.  
  
GEORGE TANNER, et al.,  
  
Defendants.

AFFIDAVIT OF  
GEORGE TANNER

Civil No. 59808

STATE OF UTAH )  
County of Salt Lake ) ss.:

GEORGE TANNER, being first duly sworn, deposes and says that he is one of the defendants above-named and is one of the assignees of the certificate of sale involved in the above-entitled case. Affiant states that he was not contacted by any representative of Granada, Inc., regarding the redemption of the land described in the said certificate of sale regarding the amount of money required to redeem or other matters relating to the redemption. He further states, specifically, that he did not refuse to "give" David K. Broadbent the amount required for redemption and did not tell him that the right to redeem was disputed. He did not discuss with Mr. Broadbent, in person or by telephone, any subject relating to redemption.

Affiant further states that he had no conversations, in person or by telephone, with Lt. Keith Bills about the redemption and did not tell Mr. Bills or any other person that he was trying to obtain interest in addition to the amount provided in Rule 69 (f), Utah Rules of Civil Procedure.

VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
ATTORNEYS FOR DEFENDANTS  
A PROFESSIONAL CORPORATION  
SUITE 1600 50 SOUTH MAIN STREET  
SALT LAKE CITY UTAH 84144

George Tanner  
GEORGE TANNER, Affiant

SUBSCRIBED and sworn to before me by GEORGE TANNER  
this 10<sup>th</sup> day of September, 1982.

James A. Chaswick  
Notary Public

My Commission Expires:

January 31, 1983

Resident of:

Salt Lake County

VAN COTT, BAGLEY, CORNWALL & MCCARTHY  
Edwin E. Skeen  
Attorneys for Defendants  
50 South Main Street, Suite 1600  
Salt Lake City, Utah 84144  
Telephone 532-3333

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

GRANADA, INC., a Utah  
Corporation,

Plaintiff,

vs.

GEORGE TANNER, et al.,

Defendants.

AFFIDAVIT OF  
IDA T. HAMBLIN

Civil No. 59808

STATE OF UTAH )

) ss.:  
County of Salt Lake )

IDA T. HAMBLIN, being first duly sworn, deposes and says that she is one of the defendants above-named and is one of the assignees of the certificate of sale involved in the above-entitled case. Affiant states that she was not contacted by any representative of Granada, Inc., regarding the redemption of the land described in the said certificate of sale regarding the amount of money required to redeem or other matters relating to the redemption. She further states, specifically, that she did not refuse to "give" David K. Broadbent the amount required for redemption and did not tell him that the right to redeem was disputed. She did not discuss with Mr. Broadbent, in person or by telephone, any subject relating to redemption.

Affiant further states that she had no conversations, in person or by telephone, with Lt. Keith Bills about the redemption and did not tell Mr. Bills or any other person that she was trying to obtain interest in addition to the amount provided in Rule 69 (f), Utah Rules of Civil Procedure.

Affiant was at home all day on November 29, 1981, and 30, 1981, and no one contacted her in person or by telephone regarding redemption of the land described in the said certificate of sale.

IDA T. HAMBLIN, Affiant

SUBSCRIBED and sworn to before me by Ida T. Hamblin  
this 10<sup>th</sup> day of September, 1982.

James A. Haskins  
Notary Public

My Commission Expires:

January 31, 1983

Resident of

Salt Lake County

Van Cott Bagley Cornwall & McCarthy  
Attorneys at Law  
1500 South Main Street, Suite 1600  
Salt Lake City, Utah 84143  
Telephone 333-1133

1982 NOV 16 PM 3:20

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
IN AND FOR UTAH COUNTY, STATE OF UTAH

GRANADA, INC. a Utah )  
Corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
GEORGE TANNER, et al , )  
 )  
Defendants. )

AFFIDAVIT OF  
LAWSON O. HAMBLIN

Civil No. 59808

STATE OF UTAH )  
 ) ss.  
County of Salt Lake )

LAWSON O. HAMBLIN, being first duly sworn, deposes and says that he is the husband of Ida T. Hamblin, one of the defendants above-named. Affiant states that in the afternoon of November 29<sup>th</sup>, 1981, and with the knowledge that no payment had been tendered or made to Ida T. Hamblin nor to George Tanner to redeem two acres of land they held a sheriff's sale certificate on, I went to the Utah County Sheriff's Office at 1775 Dakota Lane, Provo, Utah, to see if the money had been paid to that office. At the Sheriff's Office I was told I should talk to Lieutenant Bills. Lieutenant Bills came up to me and inquired if he could help me. I made known to him the reason I was there. I wanted to know if Charles Moore, American Tierra Corporation, or anyone else had paid to the Sheriff's Office any money to redeem the land I identified to him. Lieutenant Bills said "No one has tendered any money to me nor to this office to redeem that property." I asked him what time of the day could someone offer to pay the money to

him or his office? His answer to me was "12:00 midnight today".  
I thanked him and left. I was there about ten minutes and we had  
no further conversation about the property.

LAWSON O. HAMBLIN, Affiant

SUBSCRIBED and sworn to before me by LAWSON O. HAMBLIN  
this 16<sup>th</sup> day of November, 1982.

[Signature]  
Notary Public

My Commission Expires:

Sept 12<sup>th</sup>, 1986

Resident of:

Salt Lake City

CERTIFICATE OF DELIVERY

Copy of the foregoing hand-delivered this

16<sup>th</sup> day of November, 1982, to:

Cullen Y. Christensen  
CHRISTENSEN, TAYLOR & MOODY  
55 East Center Street  
P. O. Box 1466  
Provo, Utah 84603

[Signature]  
Secretary

Cullen Y. Christensen  
CHRISTENSEN, TAYLOR & MOODY  
Attorneys for Plaintiff  
15 East Center Street  
P.O. Box 1466  
Provo, UT 84603  
Telephone (801) 373-2721

131117 10 11



de

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY  
STATE OF UTAH

GRANADA, INC., a Utah  
corporation,

Plaintiff,

Civil No. 59808

vs.

AMENDED SUMMARY JUDGMENT

GEORGE TANNER, IDA TANNER  
HAMBLIN and STANLEY H. WALKER,  
Utah County Treasurer,

Defendants.

This matter came on duly and regularly for hearing before the Court, the same having been submitted pursuant to Rule 2.8 of the Rules of Practice of the District Courts of the State of Utah upon the motion of plaintiff for partial summary judgment. The plaintiff appeared and was represented by counsel, CULLEN Y. CHRISTENSEN of the firm of CHRISTENSEN, TAYLOR & MOODY. The defendants, GEORGE TANNER and IDA TANNER HAMBLIN, also known as IDA HAMBLIN, appeared and were represented by counsel, EDWIN J. SKEEN of the firm of VANCOTT, BAGLEY, CORNWALL & MCCARTHY. No appearance was made on behalf of defendant, STANLEY WALKER, Utah County Treasurer. The Court thereupon entertained the arguments of counsel and having



considered the files and pleadings in the case, as well as the Memorandum of Points and Authorities submitted on behalf of the respective parties, and upon being fully advised in the premises and having determined that no genuine issue of material fact exists as to matters raised by the Motion of Plaintiff for Summary Judgment, it being stipulated that the Second Cause of Action stated in plaintiff's Complaint shall be dismissed without prejudice, and the Court having determined that plaintiff is entitled to summary judgment as prayed as a matter of law,

IT IS NOW BY THE COURT HEREBY ORDERED, ADJUDGED AND DECREED:

1. That plaintiff has taken all appropriate steps to redeem and is entitled to redeem the real property described in the Complaint and hereinafter described from the Utah County Sheriff's Sale of said property conducted on May 26, 1981, pursuant to Judgment and Decree of Foreclosure entered in Civil Case No. 55298, in the above entitled Court.

2. That defendants TANNER and HAMBLIN shall and they are hereby ordered to forthwith and in any event within fifteen (15) days of the date hereof, execute and deliver to plaintiff a good, sufficient and proper certificate of redemption from said sale covering said real property.

3. That defendants TANNER and HAMBLIN shall and they are hereby ordered to accept the funds in the amount of \$84,366.00 as paid by plaintiff to the clerk of the above entitled

Court on the 25th day of November, 1981, and now held by the Utah County Treasurer, as payment in redemption of said property.

4. That upon execution and delivery of said Certificate of Redemption by defendants TANNER and HAMBLIN as herein ordered, or upon the expiration of fifteen (15) days from the date hereof and the recording of this Judgment by the plaintiff as hereinafter provided, defendants TANNER and HAMBLIN shall be entitled to claim said funds and the said Utah County Clerk and Utah County Treasurer shall turn said funds to defendants TANNER and HAMBLIN upon the request of said defendants.

5. That in the event said defendants TANNER and HAMBLIN shall fail, neglect or refuse to make, execute, acknowledge and deliver to the plaintiff said Certificate of Redemption within the time hereinabove fixed, then and in that case this Judgment shall stand and be a good, sufficient and complete conveyance and Certificate of Redemption from defendants, GEORGE TANNER and IDA TANNER HAMBLIN, also known as IDA HAMBLIN, to the plaintiff, GRANADA, INC., a Utah corporation, all of the right, title and estate of said defendants in and to said real estate and the same shall be taken and held as good, complete and perfect a Certificate of Redemption as would be the Certificate of Redemption hereinabove specified.

6. That defendants TANNER and HAMBLIN, by reason hereof, are declared to have no right, title or interest in said property and said defendants and all those claiming by, through or under

them or either of them are hereby debarred from asserting any claim or interest in or to said property adverse to the title and ownership of plaintiff.

7. That the Certificate of Sale, redemption of which is hereby ordered, is dated the 26th day of May, 1981, and was filed for record on the 27th day of May, 1981, as Entry No. 15290, in the office of the Recorder of Utah County, Utah, in Book 1915, at page 770, which Certificate of Sale was issued by the Fourth Judicial District Court in Civil Case No. 55298, entitled, "First Security Mortgage Company, a Utah corporation, Plaintiff, vs. American Tierra Corporation, a Utah corporation, et al., Defendants, and which Certificate of Sale was assigned by First Security Mortgage Company to GEORGE TANNER and IDA HAMBLIN on the 4th day of June, 1981, a copy of said Assignment being attached hereto as Exhibit "A".

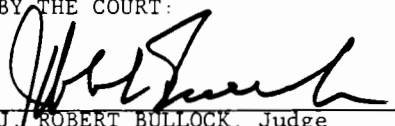
8. That the property with which this Judgment is concerned is situate in Utah County, State of Utah, and is more particularly described as follows, to-wit:

BEGINNING on the North right of way line of 2200 North Street at a point which is 1052.12 feet North and 548.93 feet East from the South Quarter corner of Section 25, Township 6 South, Range 2 East of the Salt Lake Base and Meridian; thence North 87°17'24" West 204.16 feet along said right of way; thence North 1°26'08" West 427.23 feet; thence South 87°17'24" East 204.49 feet; thence South 1°26'08" East 312.69 feet; thence South 1°16'14" East 114.52 feet to the point of beginning.

9. That the Second Cause of Action stated in plaintiff's Complaint be, and the same is hereby dismissed without prejudice.

DATED at Provo, Utah this 17<sup>th</sup> day of May,  
1983

BY THE COURT:

  
J. ROBERT BULLOCK, Judge

CERTIFICATE OF MAILING

Copy of the foregoing was mailed, postage prepaid, to Edwin J. Skeen, VANCOTT, BAGLEY, CORNWALL & MCCARTHY, attorneys for defendants, GEORGE TANNER and IDA TANNER HAMBLIN, 50 South Main Street, Suite 1600, Salt Lake City, Utah 84114, and to Noall T. Wootton, Utah County Attorney, 51 South University Avenue, Provo, Utah 84601, this 3rd day of May, 1983.

  
CULLEN CHRISTENSEN, Attorney

ASSIGNMENT OF CERTIFICATE OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That FIRST SECURITY MORTGAGE COMPANY, a Utah corporation, with its principal place of business located in Salt Lake City, Salt Lake County, State of Utah, in consideration of the sum of TEN DOLLARS (\$10.00) and other adequate consideration, to it in hand paid, the receipt and sufficiency whereof are hereby acknowledged, has sold, and by these presents does bargain, sell, assign, transfer, quitclaim, and set over unto \_\_\_\_\_

George Tanner and Ida Hamblin, as tenants in common

\_\_\_\_\_, of Orem, Utah County, State of Utah, all its right, title, interest, and equity in and to that certain Certificate of Sale of Real Estate Under Foreclosure bearing date the 26th day of May, 1981, and filed for record May 27, 1981, as Entry No. 15290, and recorded in the Office of the Recorder of Utah County, State of Utah, in Book 1915 at Page 770, which Certificate of Sale was issued by the Fourth Judicial District Court in the civil case numbered 55298, entitled "FIRST SECURITY MORTGAGE COMPANY, a Utah corporation, Plaintiff, vs. AMERICAN TIERRA CORPORATION, a Utah corporation, et al., Defendants", and describing the following real property situate in Utah County, State of Utah, to-wit:

Beginning on the North right of way line of 2200 North Street at a point which is 1052.12 feet North and 548.93 feet East from the South quarter corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian; and running thence North 87°17'24" West 204.16 feet along said right of way North 1°26'08" West 427.23 feet; thence South 87°17'24" East 204.49 feet; thence South 1°26'08" East 312.69 feet; thence South 1°16'14" East 114.52 feet to the point of beginning.

TO HAVE AND TO HOLD, the said Certificate of Sale, and the rights of the assignor in and to the premises and property

EX "A"

herein described, subject to any rights of redemption, unto the said George Junner and Ida Hamblin, as tenants in common, and their successors and assigns, together with all the right, title, and interest of the assignor in and to the premises and property therein described.

The assignor hereby covenants and warrants that it is the lawful owner and holder of said Certificate of Sale, and that it has a good and perfect right to sell and assign the same, and that it will warrant and defend the title thereto against the lawful claims and demands of all persons whomsoever, subject to any right of redemption inherent therein.

This is an absolute transfer of title to said Certificate of Sale, in effect as well as in form, and is not intended as a mortgage, pledge, or other trust or security transfer of any kind whatsoever.

IN WITNESS WHEREOF, the assignor has caused these presents to be executed this 4<sup>th</sup> day of June, 1981.

FIRST SECURITY MORTGAGE COMPANY,  
a Utah corporation

By: Henry S. Kesler  
Henry S. Kesler  
Executive Vice President

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE        )

On the 4th day of June, 1981, personally appeared before me HENRY S. KESLER, who being by me duly sworn, did say that he is the Executive Vice President of First Security Mortgage Company, a Utah corporation, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and the said HENRY S. KESLER duly acknowledged to me that said corporation executed the same.

My Commission Expires:

January 1, 1983

Michelle Smith  
Notary Public  
Residing at: Salt Lake City, Utah